

## **REMARKS**

### **Overview**

Claims 1-39, 42-43, and 48-50 are pending in this application. Claims 1, 3, 7, 38, and 50 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **Issues Under 35 U.S.C. § 102**

Claims 38 and 39 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent No. 5,983,073 to Ditzik. Claims 38 and 43 have been amended. Claims 40-41 and 45-47 have been cancelled.

Claim 38 has been amended to specify the type of voice transceiver. Claim 38 now requires "a cellular transceiver disposed within the body and adapted for communications over a cellular communication network." Ditzik does not anticipate claim 38 because claim 38 requires that a removeable card include both "a short-range transceiver disposed within the removeable card body and adapted for two-way communications with a hands free voice communication unit" and "a cellular transceiver disposed within the body and adapted for communications over a voice communication network." Thus, claim 38 requires two different types of transceivers to be present on the same removable card. Ditzik does not disclose such a device. At best, Ditzik, as interpreted by the Examiner, discloses the existence of BLUETOOTH cards and the existence of fax/modem cards. Ditzik does not disclose a single card that has the functionality of both a short range wireless transceiver (such as BLUETOOTH) card and a cellular transceiver. Therefore, this rejection to claim 38 must be withdrawn. As claim 39 depends from claim 38, this rejection should also be withdrawn.

### **Issues Under 35 U.S.C. § 103**

Claims 1, 3-24, 36 and 50 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,983,073 to Ditzik in view of U. S. Patent No. 6,112,103 to Puthuff and further in view of U.S. Patent No. 5,933,506 to Aoki et al. These rejections are respectfully traversed.

As the Examiner recognizes, Ditzik does not disclose a computer adapted to receive voice sound information from a short-range transceiver; the computer adapted to send voice sound information to the short-range transceiver, and wherein the hands-free voice communication device unit comprises a plurality of input sensors (Office Action, p. 8). As the Examiner also recognizes, neither Ditzik nor Puthuff discloses a handsfree communication device comprising a plurality of input sensors (Office Action, p. 8).

In addition, the Examiner indicates that Ditzik discloses a handsfree voice communication device unit comprising an input sensor, a processor operatively connected to the sensor, a speaker, and a short range transceiver operatively connected to the processor and the speaker, citing to Fig. 3A; Fig. 7; col. 8, lines 25-27; col. 8, lines 32-35; col. 8, lines 38-42. The Examiner does not specify any particular structure disclosed by Ditzik which the Examiner considers to be the "processor". Instead, the Examiner indicates that the incoming signals to the ear set must be processed such that intelligible audio is output from the speaker, the outgoing signals from the ear set must be processed such that signals will be proper for short range transmission thus there will be an inherent processing means coupled to the input sensor, speaker, and short range transceiver (Office Action, p. 7). Claim 1 requires that the handsfree voice communication device unit comprise "a processor". There is no such structure in Ditzik.

The fact that the Examiner considers there to be processing is insufficient to show a processor. Even if it is correct to read Ditzik to inherently disclose signal conditioning or signal processing, such activity does not necessarily require a processor. In order for a disclosure to be inherent, "the missing descriptive matter must necessarily be present in the application's specification such that one skilled in the art would recognize such a disclosure". Turbo Care V. General Electric Co., 264 F.3d 1111, 60 U.S.P.Q.2d 1017, 1023 (Fed. Cir. 2001).

Thus, the Examiner has not provided a proper basis for a *prima facie* rejection and therefore this rejection must be withdrawn.

Claim 1 has been further amended to specify that the processor is a "digital" processor, to clarify that the processor can be a microprocessor, signal processor, or other type of digital processor and not merely a circuit that can provide for some type of "processing". Therefore, it is respectfully submitted that this rejection be withdrawn for this reason as well. Claims 3-24 and 36 depend from claim 1. Therefore, it is respectfully submitted that these rejections also be withdrawn.

Claim 50 has been amended to include the "digital processor" of the handsfree device. Therefore it is respectfully submitted that this rejection should also be withdrawn for substantially the same reasons expressed with respect to claim 1.

Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,983,073 to Ditzik in view of U.S. Patent No. 6,112,103 to Puthuff in further view of U.S. Patent No. 5,933,506 to Aoki et al, and further in view of U.S. Patent No. 5,982,904 to Eghtesadi et al. These rejections are respectfully traversed. Claim 2 depends from independent claim 1 which further distinguishes claim 1 from the combination of Ditzik, Puthuff and Aoki. In particular, claim 1 requires "a digital processor operatively connected to the plurality of input

sensors, a speaker, and a short range transceiver operatively connected to the digital processor and the speaker." Eghtesadi et al do not disclose this element either. Therefore, this rejection to claim 2 must also be withdrawn.

Claims 7 and 50 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,983,073 to Ditzik in view of U.S. Patent No. 6,112,103 to Puthuff in further view of U.S. Patent No. 5,933,506 to Aoki et al. as applied to claim 1 and further in view of U.S. Patent No. 5,363,444 to Norris. The differences of Ditzik, Puthuff, and Aoki et al. have already been addressed with respect to claim 1. Norris does not remedy these deficiencies.

Claims 25-29, 31-35, and 42 have been rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,983,073 to Ditzik in view of U.S. Patent No. 5,933,506 to Aoki et al. and further in view of U.S. Patent No. 5,363,444 to Norris. These rejections are respectfully traversed.

Claim 25 requires "wherein the handsfree voice communication unit is sized and shaped so as not to occlude an external auditory canal of a user while the plurality of sensors are sensing the voice sound information." Neither Ditzik nor Aoki et al. nor Norris disclose the combination of a non-occlusive earpiece with a plurality of sensors. This is a significant difference which provides significant advantages over all of these references. In fact, one of the objects of the invention was to provide synergistic results (paragraph [0015]). Using the plurality of sensors provides for improved voice quality while the non-occlusive earpiece provides for comfort. It is believed that the Examiner, in making these rejections, has disregarded the invention as a whole by parsing the language of the claims too closely to artificially separate the claim language into elements. Therefore, it is respectfully submitted that this rejection must be withdrawn. As

claims 26-29 depend from claim 25, it is respectfully submitted that these rejections be withdrawn as well.

The rejection to claim 31 should be withdrawn for substantially the same reasons expressed with respect to claim 25. As claims 32-35 depend from claim 31, it is respectfully submitted that these rejections be withdrawn as well as well.

The rejections to claim 42 should be withdrawn for substantially the same reasons expressed with respect to claim 25.

Claim 30 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ditzik in view of Aoki et al. and further in view of Norris, as applied to claim 25 and further in view of U.S. Patent No. 5,913,196 to Talmor et al. Ditzik, Aoki et al., and Norris are deficient for the reasons expressed with respect to claim 25. Talmor does not remedy the deficiencies of Ditzik and Aoki. Therefore, this rejection should also be withdrawn.

Claim 37 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,983,073 to Ditzik in view of U.S. Patent No. 6,112,103 to Puthuff and in further view of U.S. Patent No. 5,933,506 to Aoki et al, as applied to claim 1 and further in view of U.S. Patent No. 5,943,324 to Ramesh et al. This rejection is respectfully traversed. Claim 37 depends from claim 1 which is distinguishable from the combination of Ditzik, Puthuff, and Aoki for the reasons previously expressed. Ramesh et al is directed towards mobile satellite communications and therefore does not disclose the particulars of the claimed earpiece.. Therefore, this rejection to claim 37 should also be withdrawn.

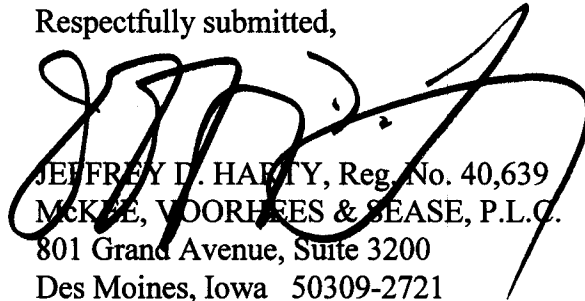
Claims 44, 48-49 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ditzik in view of U.S. Patent No. 5,913,196 to Talmor et al. The Examiner indicates that Talmor teaches an identifier that is a voice sample, citing to col. 5, lines 18-29, col. 7, lines 53-62, and

column 8, lines 6-9. The Examiner indicates that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the authentication method taught in Talmor in the computer of Ditzik as an alternative means for preventing an authorized user of the earpiece from communicating with the computer for further access to the wide area network as taught by Talmor. In Ditzik, any earpiece used is in close physical proximity of the computer, thus Ditzik does not provide for automatic means to identify a user of the earpiece. For example, Ditzik specifically discloses "If one is using the earset he/she may also use a pen input means or keyboard 16 while in audio communications" (col. 8, lines 27-28). Ditzik is clearly focused on a modular notebook and PDA computer system as opposed to managing access to a wide-area network. Therefore, there would be no motivation to combine Ditzik with Talmor. Therefore, this rejection to claim 43 must be withdrawn. As claims 48-49 depend from claim 43, these rejections must also be withdrawn.

This amendment accompanies the filing of a Request for Continued Examination (RCE). This is also a request under the provision of 37 CFR § 1.136(a) to extend the period for filing a response in the above-identified application for three months from April 3, 2006 to July 3, 2006. Applicant is a large entity; therefore, please charge Deposit Account number 26-0084 in the amount of \$1,020.00 for three months to cover the cost of the extension. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Harty', is written over the printed name and firm information.

JEFFREY D. HARTY, Reg. No. 40,639

MCKEE, VOORHEES & SEASE, P.L.C.

801 Grand Avenue, Suite 3200

Des Moines, Iowa 50309-2721

Phone No: (515) 288-3667

Fax No: (515) 288-1338

**CUSTOMER NO: 22885**

Attorneys of Record

- pw -